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ARIZONA ATTORNEY GENERAL

Mr. John W. Holmes
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Arizona State Hospital
2500 E. Van Buren
Phoenix, Arizona 85008

Dear Mr. Holmes:

This is in response to Dr. Bower's letter of March 5, 1975 wherein he requested our opinion concerning the answers to the following two questions:

1. If a local mental health agency has performed a court ordered evaluation, pursuant to A.R.S. § 36-529, is it possible for that mental health agency to petition for a finding of incapacity and appointment of a guardian under A.R.S. § 14-5303, rather than petition for a guardianship under A.R.S., Title 36, Chapter 5, Article 8?
2. A.R.S. § 36-547.B(1), purports to limit the duration of a guardianship under that chapter and, in order to do so, refers to A.R.S. § 14-5307.B as the limiting factor. However, A.R.S. § 14-5307.B does not itself limit the duration of a guardianship, but, instead, deals with the process for removal of a guardian. Does this mean that a guardianship, under A.R.S., Title 36, Chapter 5, Article 8 is not, in fact, limited to a period of one (1) year before it must be reviewed by the Court?

In response to your first question, it is the position of this office that a local mental health agency, hereinafter referred to as an evaluation agency, can file a petition for a finding of incapacity and appointment of a guardian pursuant to A.R.S. § 14-5303, if that evaluation agency qualifies as a person interested in the welfare of the incapacitated person as required under A.R.S. § 14-5303.A.

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When an evaluation agency has performed a court ordered evaluation pursuant to A.R.S. § 36-529, and that agency has made its findings as to the mental condition of the evaluated person, A.R.S. § 36-531 dictates the subsequent actions to be taken by the evaluation agency. A.R.S. § 36-531.A provides that if, in the opinion of the medical director of the agency, the person being evaluated is no longer, as a result of mental disorder, a danger to himself or others, nor gravely disabled, the medical director of the agency must release the person unless that person makes application for further care and treatment on a voluntary basis. A.R.S. § 36-531.B further provides that if it is determined that the person being evaluated is, as a result of a mental disorder, a danger to himself or others, the medical director of the evaluating agency must file a petition for court ordered treatment unless that person makes application for further care and treatment on a voluntary basis. Finally, A.R.S. § 36-531.C provides that the medical director in charge of the evaluation agency must file a petition requesting guardianship pursuant to A.R.S., Title 36, Chapter 5, Article 8 if the person being evaluated is determined to be, as a result of a mental disorder, gravely disabled.

"Gravely disabled" is defined in A.R.S. § 36-501.11 to mean:

" . . . a condition in which a person is unable to provide for his basic personal needs for food, clothing and shelter as a result of a mental disorder of a type which has:

(a) developed over a long period of time and has been of long duration; or

(b) developed as a manifestation of degenerative brain disease during old age; or,

(c) developed as a manifestation of some other degenerative physical illness of long duration."

"Incapacitated person" is defined in A.R.S. § 14-5101.1 to mean:

" . . . any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person."

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It is apparent from these definitions that being a "gravely disabled" person could require a different mental condition from that required to be an "incapacitated person". Furthermore, a person could be determined to be incapacitated yet not be, as a result of mental disorder, a danger to himself or others so as to require the medical director of an evaluation agency to petition the court for court ordered treatment. Therefore, it would appear that the medical director of the evaluation agency would have no alternative but to release an incapacitated person pursuant to the directive of A.R.S. § 36-531.A.

A.R.S. § 14-5303, however, sets forth a procedure whereby a guardian may be appointed for an incapacitated person. A.R.S. § 14-5303.A provides:

"The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian."

Therefore, if the evaluation agency can show that it is interested in the welfare of the person it has evaluated, the evaluation agency may file a petition for a finding of incapacity and appointment of a guardian pursuant to A.R.S. § 14-5303. For example, if the evaluating agency is also a treatment agency and is responsible for the care and treatment of the person it has evaluated, that evaluating agency would be sufficiently interested in that person's welfare so as to qualify to file a petition pursuant to A.R.S. § 14-5303.

In response to your second question, the initial and all succeeding periods of a guardianship pursuant to A.R.S., Title 36, Chapter 5, Article 8, are limited to periods of not more than one year.

A.R.S. § 36-547 provides in pertinent part:

"B. Procedure for establishing, administering and terminating guardianship under this article shall be the same as that provided in title 14, except as follows:

1. The guardianship of a gravely disabled person shall be limited in time pursuant to an order under § 14-5307, subsection B, to a period of one year from the date of the appointment of the guardian.

2. At the determination of an initial or succeeding one-year period of guardianship, if a guardian of a gravely disabled person determines that guardianship is still required, he may petition

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the court for reappointment as guardian for an additional period not to exceed one year under the safeguards provided in § 14-5303, subsection B, and this article."

This provision limits a guardianship to a period of one year from the date of the appointment of the guardian. A.R.S. § 36-547.06.A allows the one year period to be shortened by the guardian, the ward, or any interested person petitioning the court for an order that the ward is no longer gravely disabled as a result of mental disorder. This petition for a review of the guardianship may be filed at any time after the guardian has been appointed but such petitions may not be filed more than once each six months. The Court, however, may enter an order pursuant to A.R.S. § 14-5307.B further restricting the filing of such petitions for a period of up to one year.

Please advise if you have any further questions regarding these matters.

Sincerely,

BRUCE E. BABBITT
Attorney General

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